

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Comprehensive Review of the Accounting |) | CC Docket No. 99-253 |
| Requirements and ARMIS Reporting Requirements |) | |
| for Incumbent Local Exchange Carriers: Phase I |) | |
| |) | |
| Waiver of Section 64.904 of the Commission's |) | |
| Rules |) | |

ORDER

Adopted: March 23, 2006

Released: March 23, 2006

By the Associate Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we adopt a limited, one-time waiver of section 64.904 of the Commission's rules to permit all carriers that are subject to the independent audit requirement to file, on April 1, 2006,¹ two annual audit reports covering each of the prior two years instead of one audit report covering both of the prior two years, as currently required.² This limited waiver provides carriers with immediate and timely relief while the Commission considers a letter by AT&T Inc. (AT&T) and BellSouth Corporation (BellSouth) (jointly, the Companies) requesting that the Commission adopt a non-substantive amendment to section 64.904 to provide carriers with the same relief on a permanent basis.³

II. BACKGROUND

2. Section 64.904 of the Commission's rules directs each carrier that is required to file a cost allocation manual to submit, every two years, an audit report covering the prior two years.⁴ The Commission adopted the biennial audit requirement in the *Phase I Accounting Reform Order*.⁵ Previously,

¹ We note that the April 1 deadline falls on a Saturday this year. Accordingly, carriers must file the biennial audit report on or before April 3, 2006. 47 C.F.R. § 1.4(j). In this Order, however, we will continue to refer to the filing deadline as April 1.

² Carriers that do not take advantage of this waiver must file one audit report covering both of the prior two years, as currently required by section 64.904. *See* 47 C.F.R. § 64.904.

³ Letter from Michelle A. Thomas, AT&T Services, Inc., and Mary L. Henze, BellSouth Corporation, to Thomas J. Navin, Federal Communications Commission (dated Jan. 18, 2006) (Letter).

⁴ *See* 47 C.F.R. § 64.904. To fulfill this requirement, a carrier may elect to have an attest engagement performed by an independent auditor every two years, covering the prior two-year period, or to have a financial audit performed by an independent auditor every two years, covering the prior two-year period. *Id.* § 64.904(a); *see also* *Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase I*, CC Docket No. 99-253, Report and Order, 15 FCC Rcd 8690, 8698-99, para. 15 (2000) (*Phase I Accounting Reform Order*).

⁵ *Phase I Accounting Reform Order*, 15 FCC Rcd at 8698-99, para. 15.

carriers were required to submit an audit report each year.⁶ The Commission determined that the biennial audit requirement would be less costly and burdensome to carriers and would not compromise the Commission's ability to meet its statutory and policymaking responsibilities.⁷

3. The Companies, however, inform the Commission that it can be more costly for carriers to file one audit report covering the prior two years than to file two annual audit reports covering each of the prior two years.⁸ For example, they note that section 64.904(c) requires auditors to provide a positive opinion on the carrier's "annual report required by section 43.21(e)(2)."⁹ They claim that this language effectively calls for two financial audits instead of one biennial financial audit because an auditor must separately audit each annual report in order to provide a positive opinion on each annual report.¹⁰ Moreover, although carriers' annual reports already are audited each year, the Companies claim that an auditor cannot simply rely on the prior year's audit when preparing the biennial audit report.¹¹ Instead, under the applicable audit standards, the auditor must repeat some, if not all, of the tasks performed for the prior year's audit, as well as audit the second year's annual report.¹²

4. The Companies further assert that undergoing two financial audits at the same time -- an audit of the second year's annual report and a re-audit of the first year's annual report -- is particularly burdensome.¹³ They note that there are several tasks associated with an audit, such as making annual adjusting and closing entries to the books of account, performing multiple runs of the cost allocation system, making ARMIS adjustments, and filing ARMIS reports.¹⁴ They argue that performing these tasks twice, and around the same time, requires "an inordinate amount of administrative effort and resources."¹⁵

5. The Companies state that allowing carriers to file two annual audit reports in a single filing at the end of two years would eliminate the extra work that is currently performed in the second year to produce the biennial audit report.¹⁶ The Companies further argue that this approach "provides the Commission with a functionally equivalent audit."¹⁷ Accordingly, the Companies ask the Commission to adopt a non-substantive amendment to section 64.904 to give carriers the option of filing a biennial audit report that consists of two annual audit reports covering each of the prior two years instead of one audit report covering both of the prior two years.¹⁸

⁶ *Id.*

⁷ *Id.*

⁸ *See* Letter at 2-3.

⁹ *Id.* at 2 (citing 47 C.F.R. § 64.904(c)).

¹⁰ *Id.*

¹¹ *See id.*

¹² *Id.* For example, the Companies note that the auditor must review the company's adjusting and closing entries to the books of account, as well as its ARMIS adjustments and reports. *Id.* at n.8.

¹³ *Id.* at 2-3.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 1.

¹⁸ *Id.*

III. DISCUSSION

6. The Commission may waive any provision of its rules on its own motion for good cause shown.¹⁹ A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.²⁰ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²¹ In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.²²

7. Based on the information provided by the Companies, we conclude that there is good cause to adopt a limited, one-time waiver of section 64.904 to permit carriers to file, on April 1, 2006, two annual audit reports covering each of the prior two years instead of one audit report covering both of the prior two years. As noted above, the Commission adopted the biennial audit requirement in order to reduce the burdens on carriers.²³ The Companies inform us, however, that the biennial audit requirement has had the unintended effect of increasing burdens on at least some carriers.²⁴ Accordingly, we find that these special circumstances warrant a deviation from the general rule. Moreover, a limited waiver will reduce the burdens associated with the independent audit requirement while providing the Commission with a functionally equivalent audit. Consequently, we find that a limited waiver will better serve the public interest than strict adherence to section 64.904. Finally, we note that the limited waiver adopted herein will provide carriers with immediate and timely relief for their April 1, 2006 filing, while allowing the Commission to consider the Companies' request for a non-substantive amendment to section 64.904 on a less time-sensitive basis.

IV. ORDERING CLAUSE

8. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), and 220 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 220, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, that section 64.904 of the Commission's rules IS WAIVED to the extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

Donald K. Stockdale, Jr.
Associate Chief, Wireline Competition Bureau

¹⁹ 47 C.F.R. § 1.3.

²⁰ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

²¹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *affirmed by WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972).

²² *Northeast Cellular*, 897 F.2d at 1166.

²³ *See supra* para. 2.

²⁴ Letter at 2.